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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 JOHNNY ALVAREZ,) CASE NO. ED CV 11-588 VBF (PJW)
11)
12 Petitioner,) ORDER TO SHOW CAUSE WHY PETITION
13) SHOULD NOT BE DISMISSED
14 v.)
15 DOMINGO URIBE, JR.,)
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17 Respondent.)
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16 On March 29, 2011, Petitioner submitted the instant Petition for
17 Writ of Habeas Corpus, seeking to challenge his 2003 state conviction
18 for assault with a firearm. (Petition at 2.) For the following
19 reasons, Petitioner is ordered to show cause why his Petition should
20 not be dismissed because it is untimely.

21 State prisoners seeking to challenge their state convictions in
22 federal habeas corpus proceedings are subject to a one-year statute of
23 limitations. 28 U.S.C. § 2244(d). District courts are empowered to
24 examine the timeliness of a petition *sua sponte*. See *Day v.*
25 *McDonough*, 547 U.S. 198, 209-10 (2006). Here, it appears that
26 Petitioner's conviction became final in November 2008, 90 days after
27 the California Supreme Court denied review and the time expired for
28 him to petition the United States Supreme Court. (Petition at 3.)

1 See *Bowen v. Roe*, 188 F.3d 1157, 1158-59 (9th Cir. 1999). Therefore,
2 the statute of limitations expired one year later, in November 2009.
3 See *Patterson v. Stewart*, 251 F.3d 1243, 1246 (9th Cir. 2001).
4 Petitioner, however, did not file this Petition until March 2011, more
5 than 16 months after the deadline.

6 Though, presumably, the statute of limitations was tolled while
7 Petitioner's state habeas corpus petitions were pending, his second
8 and final petition was denied by the superior court on November 10,
9 2009. (Petition at 4.) Assuming Petitioner was entitled to tolling
10 from November 2008 to November 2009, his Petition would have been due
11 no later than November 2010. Thus, he would still be late.

12 IT IS THEREFORE ORDERED that, no later than **May 16, 2011**,
13 Petitioner shall inform the Court in writing why this case should not
14 be dismissed with prejudice because it is barred by the statute of
15 limitations. Failure to timely file a response will result in a
16 recommendation that this case be dismissed.

17 DATED: April 14, 2011.

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21 PATRICK J. WALSH
22 UNITED STATES MAGISTRATE JUDGE
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